

STATE OF MICHIGAN
COURT OF APPEALS

RITA C. FERGUSON,

Petitioner-Appellant,

v

TOWNSHIP OF HAMBURG,

Respondent-Appellant.

UNPUBLISHED

August 8, 2006

No. 267597

Tax Tribunal

LC No. 00-312646-MTT

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Petitioner, acting in propria persona, appeals as of right from an order of the Michigan Tax Tribunal dismissing her January 3, 2005, petition challenging the validity of respondent's 2001 special assessment on her property. The tribunal determined that petitioner previously challenged the validity of the 2001 special assessment in 2002, and the tribunal dismissed that prior petition for lack of jurisdiction, because petitioner failed to file the petition within 30 days after receiving notice of the special assessment. In a prior appeal, this Court affirmed the tribunal's dismissal of the 2002 petition. *Ferguson v Twp of Hamburg*, unpublished opinion per curiam of the Court of Appeals, issued April 13, 2004 (Docket No. 243852), lv den 471 Mich 900 (2004), cert den 544 US 962; 125 S Ct 1740; 161 L Ed 2d 604 (2005) ("*Ferguson I*"). In the present action, the tribunal determined that petitioner's claims were again directed at the validity of the 2001 special assessment, and that the tribunal's prior determination that it lacked jurisdiction over the claims had res judicata effect, thus requiring dismissal for lack of jurisdiction. We affirm.

In the absence of fraud, this Court's review of a decision of the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle. *Blaser v East Bay Twp*, 242 Mich App 249, 252; 617 NW2d 742 (2000). The tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. *Id.* Questions of statutory interpretation are reviewed de novo. *Id.*

The Tax Tribunal's jurisdiction is conferred by the Legislature pursuant to MCL 205.731. *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239-240; 477 NW2d 492 (1991).

The tribunal does not have jurisdiction to consider petitions that are not timely filed. *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002). MCL 205.735¹ provides, in pertinent part:

(1) A proceeding before the tribunal is original and independent and is considered de novo. . . . *For a special assessment dispute, the special assessment must be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.*

(2) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. . . . *In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review.* [Emphasis added.]

Petitioner argues that the statutory time constraints do not apply because respondent failed to comply with statutory notice requirements, which invalidates the special assessment. Petitioner's arguments were previously rejected by the Tax Tribunal and this Court in *Ferguson I*, wherein this Court noted that failure to provide proper notice did not invalidate the special assessment because petitioner received actual notice of the assessment and paid a portion of the assessment, MCL 41.724a(5) and (6); MCL 211.744. *Ferguson I, supra*, slip op at 2-3. In the present matter, petitioner seeks to revisit the questions of actual notice and whether she paid a portion of the assessment. Respondent argues that the doctrine of res judicata bars petitioner from relitigating these questions.

The doctrine of res judicata bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). This Court applies the doctrine of res judicata broadly, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.*

Petitioner argues that res judicata does not apply because a court's finding that it lacks jurisdiction is not a decision on the merits. But a prior determination of lack of jurisdiction has res judicata effect on the question of jurisdiction. In the prior matter, both the Tax Tribunal and this Court addressed the merits of petitioner's improper notice claims in order to determine whether the tribunal had jurisdiction. Accordingly, the requirements of res judicata are satisfied

¹ Our citation is to the version of MCL 205.735 that was in effect at the time petitioner filed the petition in the present case, 200 PA 165, effective June 20, 2000, and at the time of the Tribunal's order, 2003 PA 131, effective January 1, 2004. Although we recognize that MCL 205.735 has recently been amended, 2006 PA 174, effective May 30, 2006, we note the changes are merely procedural and pertain to the numbering of the subsection, while the relevant portions have remained substantively identical.

with respect to the issue of notice as it affects the tribunal's jurisdiction, and petitioner is barred from relitigating these questions in the present action.

Moreover, even if the doctrine of res judicata does not apply, the doctrine of collateral estoppel precludes petitioner from reasserting her claims. Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). All of these requirements are satisfied in this case.

We reject petitioner argument that res judicata does not apply because she is challenging respondent's lien on her property in her winter 2004 tax bill, which constitutes a new violation of her rights. Petitioner's claims are based on the validity of the original 2001 special assessment, and petitioner is challenging that assessment on the same grounds that she raised in *Ferguson I*. These grounds were decided against petitioner in *Ferguson I*, and she is precluded from relitigating them in subsequent proceedings arising from each new tax bill.

Petitioner's reliance on the continuing-wrongful-acts doctrine as an exception to res judicata is misplaced. Petitioner relies on *Horvath v Delida*, 213 Mich App 620; 540 NW2d 760 (1995), for the proposition that a limitations period does not run until a wrong is abated. She argues that respondent committed a new wrong each time it charged her for the special assessment on her new property tax bill. But the continuing-wrongful-acts doctrine applies only in limited circumstances, when there is a continuing series of tortious acts, not when there is only a continuing effect from a past tortious act. *Id.* at 626-627; see also *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 246-247; 673 NW2d 805 (2003). Given the limited applicability of the continuing-wrongful-acts doctrine, it is doubtful that it applies in the context of special assessments. Even if it did, however, the periodic billings are not a continuing wrongful act. The imposition of the original special assessment is the alleged wrongful act, and the periodic billings are merely a continuing effect of that act.²

Petitioner's remaining arguments are either redundant of her claim that the special assessment is invalid for improper notice, or involve challenges to the merits of the special assessment that were not reached by the Tax Tribunal, given its dismissal for lack of jurisdiction.

² Petitioner does not distinguish between the special assessment charges and the sewage utility charge on her tax bill. She contends that they are both invalid because the original special assessment was illegally imposed. She does not raise any separate arguments pertaining only to the sewage charge.

Because the tribunal did not err in dismissing this matter for lack of jurisdiction, it properly declined to consider petitioner's remaining issues, and appellate consideration is likewise unwarranted. See *Town & Country Dodge v Dep't of Treasury*, 420 Mich 226, 228 n 1; 362 NW2d 618 (1984); *Alford v Pollution Control Industries of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael R. Smolenski

/s/ Michael J. Talbot